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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,110	08/10/2001	Victoria F. Dole	JBP-563	6271

27777 7590 03/06/2006  
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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/928,110

Applicant(s)

DOLE ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **6DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 28, 2005 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely

exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 8 and 9 recites the broad recitation "polyalkylene glycols" and "alkylene polyols", and the claim also recites "including propylene glycol, dipropylene glycol, . . . propoxylated glycerol" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 2-4, 11, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bui-Bertrand et al. (US 5690945) and evidenced by Mitsubish (Derwent Acc. No. 1989-042701).**

Bui-Bertrand et al. disclose a method of making cosmetic skin-cleansing aqueous facial mask, comprising adding hydrophilic silica gels as gelling agents, pulverulent fillers such as silica (Tospearl) to add optical effects, and dyes. See col. 2, lines 49 –56; col. 3, lines 34 – 42; col. 4, lines 17-21; Examples. See instant claims 2-4, 11, and 14. The reference teaches adding moisturizers including propylene glycol, dipropylene glycol, glycerol, polyglycerol, and sorbitol. See col. 3, lines 64 – col. 4, line 10.

The reference does not specifically teach that the addition of silica to the composition comprising dyes changes color upon drying. Examiner takes the position that the claimed method is necessarily practiced due to the inherent property of silica

that changes its color depending on the moisture level of the composition. See Derwent Acc. No. 1989-04701, Abstract (teaching silica gel changes color when moisture is absorbed).

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over anticipated by Bui-Bertrand et al. and Mitsubish as applied to claims 2-4, 11, and 14 as above, and further in view of Gerstein (US 5139771).**

Bui-Bertrand et al. is discussed above. The reference fails to teach cleansing agents.

Gerstein teaches skin-cleansing mask compositions. See abstract. The reference teaches to add colorants to "impart a pleasant color" to the composition. See col. 5, lines 27 – 33; instant claim 1. Example 5 employs FD & C green # 5, and all of the FD&C colors approved for cosmetic use and inorganic pigments are said to be suitable for the invention. While Gerstein does not disclose the recited colorants in instant claim 10, examiner takes the position that, in view of the general teaching in the reference, the difference in color is a mere preference of a skilled artisan and not a nonobvious selection over the prior art. See also Examples 4, 8, and 9 for the use of various colorants. Gerstein further teaches that 0.1-7 % of surfactants, such as polysorbate 20, can be added in the compositions. See col. 4, line 52 – col. 5, line 14; col. 5, lines 43 – 64; see instant claims 5 and 6. Humectants such as glycerin (or

glycerol) and moisturizer can be used up to 1.0 % and 3.0 %, respectively. See col. 4, lines 38 – 51; col. 5, lines 33 – 43; see instant claims 7-9. Using glycerin, propylene glycol, polyethylene glycol, and ethoxylated lanolin alcohols up to 2.0 % as plasticizer is also suggested. See col. 5, lines 17 – 21.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have modified the Bui-Bertrand skin mask composition by adding the ingredients (i.e., surfactants, pigments, and moisturizers) as motivated by polysorbate 20 as motivated by Gerstein because a) both reference teach skin cleansing mask compositions; and b) Gerstein teaches the specific amounts and ingredients used in the cleansing mask formulation. The skilled artisan would have had a reasonable expectation of successfully producing a stable and effective skin cleansing mask composition which imparts pleasant color to the user.

### ***Response to Arguments***

Applicant's arguments filed on January 28, 200 have been fully considered but they are not moot in view of the new grounds of rejections.

### ***Conclusion***


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner

  
SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER